NOTICE: This opinion is subject to formal revision before publication in the Board volumes of NLRB decisions. Readers are requested to notify the Executive Secretary, National Labor Relations Board, Washington, D.C. 20570, of any typographical or other formal errors so that corrections can be included in the bound volumes.

Wheeler Manufacturing Corporation and United Steelworkers of America, AFL-CIO. Case 1-CA-30815

February 14, 1995

DECISION AND ORDER

BY CHAIRMAN GOULD AND MEMBERS COHEN AND TRUESDALE

Upon a charge filed by the Union on August 17, 1993, the General Counsel of the National Labor Relations Board issued a complaint on November 30, 1993, against the Company, the Respondent, alleging that it has violated Section 8(a)(5) and (1) of the National Labor Relations Act. On December 14, 1993, the Respondent filed an answer.

On December 1, 1993, the Union filed an amended charge. On August 24, 1994, the General Counsel of the National Labor Relations Board issued an amended complaint against the Respondent alleging that it has violated Section 8(a)(5) and (1) of the National Labor Relations Act. On September 12, 1994, the Respondent filed an answer admitting all allegations in the amended complaint.

On October 7, 1994, the General Counsel filed a Motion for Summary Judgment. On October 13, 1994, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Summary Judgment

The General Counsel advised the Respondent that, pursuant to Section 102.20 of the Board's Rules and Regulations, "any allegation in the complaint not specifically denied or explained in an answer... shall be deemed to be admitted to be true." In its September 12, 1994 answer to the complaint, the Respondent admitted all the complaint allegations. By so doing, the Respondent has admitted there is no dispute with regard to any relevant and material facts pertinent to establishing the violations alleged in the complaint. Accordingly, all the allegations in the complaint will be considered admitted to be true, and we grant the General Counsel's Motion for Summary Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

The Respondent, a Massachusetts corporation, makes motor bearings at its facility in Cambridge, Massachusetts, where it annually sells and ships from its Cambridge facility products, goods, and materials valued in excess of \$50,000 directly to points outside the Commonwealth of Massachusetts. We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

The following employees of Respondent constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All production and maintenance employees employed by the Respondent at its Cambridge facility, excluding office clerical employees, managerial employees, guards, and supervisors as defined in the Act.

For many years, and at all material times, the Union has been the designated exclusive collective-bargaining representative of the bargaining unit and has been recognized as the representative by the Respondent. This recognition has been embodied in successive collective-bargaining agreements, the most recent of which is effective from September 4, 1992, to August 31, 1995. Thus, at all times since September 4, 1992, based on Section 9(a) of the Act, the Union has been the exclusive collective-bargaining representative of the bargaining unit.

Since about October 1, 1993, the Respondent has failed and refused to make payments to the pension fund as required by the 1992–1995 agreement. This relates to the wages, hours, and other terms and conditions of employment of the bargaining unit and is a mandatory subject for purposes of collective bargaining.

By failing to makes payments to the pension fund, the Respondent has failed and refused, and is failing and refusing, to bargain collectively and in good faith with the representative of its employees, and the Respondent thereby has been engaging in unfair labor practices within the meaning of Section 8(a)(1) and (5) and Section 8(d) of the Act.

CONCLUSION OF LAW

By failing to make payments to the pension fund, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and (5) and Section 2(6) and (7) of the Act.

¹ See Page Litho, Inc., 313 NLRB 960 (1994).

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. We shall order the Respondent to make its unit employees whole by making all payments to the pension fund, as required by the 1992-1995 collective-bargaining agreement, which have not been paid and which would have been paid in the absence of the Respondent's unlawful unilateral discontinuance of the payments; and by reimbursing unit employees for any expenses ensuing from the Respondent's failure to make the required payments, as set forth in Kraft Plumbing & Heating, 252 NLRB 891 fn. 2 (1980), enfd. mem. 661 F.2d 940 (9th Cir. 1981). All payments to employees shall be made with interest as prescribed in New Horizons for the Retarded, 283 NLRB 1173 (1987). Any additional amounts necessary to make the fund whole shall be determined as set forth in Merryweather Optical Co., 240 NLRB 1213, 1216 fn. 7 (1979).²

ORDER

The National Labor Relations Board orders that the Respondent, Wheeler Manufacturing Corporation, Cambridge, Massachusetts, its officers, agents, successors, and assigns, shall

- 1. Cease and desist from
- (a) Refusing to bargain with United Steelworkers of America, AFL-CIO as the exclusive bargaining representative of the employees in the appropriate unit set forth below, by failing to make payments to the pension fund, as required by the 1992–1995 collective-bargaining agreement. The unit is:

All production and maintenance employees employed by the Respondent at its Cambridge facility, excluding office clerical employees, managerial employees, guards, and supervisors as defined in the Act.

- (b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.
- 2. Take the following affirmative action necessary to effectuate the policies of the Act.
- (a) Make whole the unit employees by paying to the pension fund the amounts required by the 1992–1995 collective-bargaining agreement with the Union that the Respondent has unlawfully failed to pay and by reimbursing the unit employees for any expenses ensuing

from the failure to make those payments, in the manner set forth in the remedy section of this decision.

- (b) Preserve and, on request, make available to the Board or its agents for examination and copying all payroll records, timecards, personnel records and reports, and all other records necessary to analyze the amounts due under the terms of this Order.
- (c) Post at its facility in Cambridge, Massachusetts, copies of the attached notice marked "Appendix." Copies of the notice, on forms provided by the Regional Director for Region 1, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.
- (d) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

Dated, Washington, D.C. February 14, 1995

William B. Gould IV,	Chairman
Charles I. Cohen,	Member
John C. Truesdale,	Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT refuse to bargain with United Steel-workers of America, AFL-CIO as the exclusive bargaining representative of the employees in the appropriate unit set forth below by failing to make payments to the pension fund as provided in our 1992–1995 collective-bargaining agreement with the Union. The unit is:

²To the extent that an employee has made personal contributions to a fund that are accepted by the fund in lieu of the employer's delinquent contributions during the period of the delinquency, the Respondent will reimburse the employee, but the amount of such reimbursement will constitute a setoff to the amount that Respondent otherwise owes the fund.

³ If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

All production and maintenance employees employed by the Respondent at its Cambridge facility, excluding office clerical employees, managerial employees, guards, and supervisors as defined in the Act.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL make whole our unit employees by paying to the pension fund the amounts required by the collective-bargaining agreement, which have not been paid, and by reimbursing our unit employees, with interest, for any of their expenses ensuing from our failure to make the required payments.

WHEELER MANUFACTURING CORPORATION